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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FERMIN PENA,	:	08 Civ. 3828 (SHS) (THK)
Petitioner,	:	
-against-	:	<u>ORDER</u>
H.D. GRAHAM, Superintendent,	:	
Respondent.	:	

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SIDNEY H. STEIN, U.S. District Judge.

In a Report and Recommendation dated December 3, 2009, Magistrate Judge Theodore H. Katz recommended that the petition for a writ of *habeas corpus* be denied and this action be dismissed. To date, no objections have been received from petitioner. Accordingly,

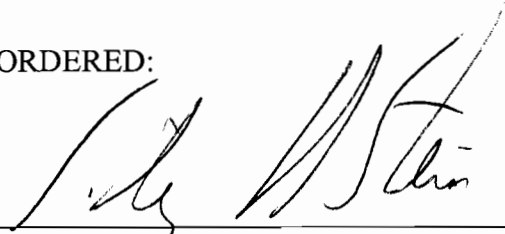
IT IS HEREBY ORDERED that:

1. Magistrate Judge Katz's "Report and Recommendation" is adopted;
2. The petition for a writ of *habeas corpus* is denied, and the action is dismissed;
3. As petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. 28 U.S.C. § 2253; see also Richardson v. Greene, 497 F.3d 212, 217 (2d Cir. 2007); and

4. Pursuant to 28 U.S.C. § 1915(a) the Court certifies that any appeal from this Order would not be taken in good faith.

Dated: New York, New York
December 30, 2009

SO ORDERED:



Sidney H. Stein, U.S.D.J.